

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION

DONNA K. SOUTTER, :
on behalf of herself and :
those similarly situated, :
 :
Plaintiffs, :
v : Civil Action
 : No. 3:10CV107
EQUIFAX INFORMATION SERVICES, :
 : May 16, 2011
Defendant. :

COMPLETE TRANSCRIPT OF CONFERENCE CALL
BEFORE THE HONORABLE ROBERT E. PAYNE
UNITED STATES DISTRICT JUDGE

APPEARANCES: (All via telephone)

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UNITED STATES DISTRICT COURT

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1 (The proceedings in this matter commenced at
2 10:00 a.m.)

3
4 THE COURT: Hello.

5 MR. BENNETT: Good morning, Judge.

6 THE COURT: Good morning. This is Soutter
7 against Equifax. Who's here for whom?

8 MR. BENNETT: Judge, for the plaintiff this
9 is Leonard Bennett. Also on the line are Mr. Erasquin
10 and Mr. Pittman.

11 MR. GOHEEN: Your Honor, Barry Goheen, Tony
12 Love and I think Mr. Montgomery either is on or is
13 going to be on in just a moment for Equifax.

14 THE COURT: All right. I gather the Fourth
15 Circuit has made no decision yet; is that correct?

16 MR. GOHEEN: This is Barry Goheen. That's
17 correct, Your Honor.

18 John, is that you?

19 MR. MONTGOMERY: This is John Montgomery.
20 I'm back on.

21 MR. GOHEEN: Thanks.

22 Your Honor, again, this is Barry Goheen.
23 That's correct, we have not received any word from the
24 Fourth Circuit. We did submit the Court's order of
25 last week on Friday, but that's the last activity that

1 I'm aware of in the Fourth Circuit.

2 THE COURT: Well, I thought maybe they might
3 do something last week because they were sitting last
4 week. Sometimes they'll act on things like that while
5 they're sitting. Well, I've read your status reports
6 and your proposed class notices. Have you all had any
7 further discussions on these notices?

8 MR. BENNETT: Judge, this is Len Bennett.
9 The answer to the question is we have not had any
10 further discussions since the filings as to the
11 notice. We have had further discussions that we
12 continued even after the filings Friday, and then this
13 morning Mr. Love and I have been back and forth
14 regarding the generation of the class list.

15 The exchanges regarding the notice with the
16 Equifax counters to our notice and then our revisions
17 back, all that occurred Friday. So there has not been
18 multiple rounds of exchanges regarding the notices in
19 the way that there had with respect to the list.

20 MR. GOHEEN: This is Barry Goheen. Let me
21 add to what Len was saying there. I think we're very
22 close. We, as Len just suggested, we traded -- I
23 guess Equifax sent a red line or proposed red line of
24 suggested edits off of what the plaintiff had
25 suggested earlier, and then, looks from what we're

1 able to tell, a lot of our suggestions were accepted.
2 A couple were not. But I think those are, you know, a
3 couple that can either be worked out or we're very,
4 very close on notice, I guess, is the point. I think
5 probably Len would agree with that. I think we're
6 pretty close.

7 THE COURT: Well --

8 MR. BENNETT: Judge --

9 THE COURT: I read what was filed with
10 Equifax, and then I matched it up with what was filed
11 in the Soutter filing, and the red line doesn't match
12 what actually was filed. And just in a couple of
13 places it looks like, for example, how does Equifax
14 answer, it looks like that was picked up in what I
15 have from Soutter. So it's been very hard for me to
16 go through these things.

17 Where is the difference now in the notice?

18 MR. BENNETT: Judge, actually, the large is
19 in the (unintelligible) opening fold --

20 THE COURT: What? Wait a minute. We lost
21 you. I don't know what's happened, Mr. Bennett, but
22 something cut you off right in the middle of what you
23 were saying. What?

24 MR. BENNETT: Sorry, Judge.

25 THE COURT: I asked you where is the

1 difference now using the Soutter filing that came with
2 the Soutter status report?

3 MR. BENNETT: Yes, sir. The first paragraph
4 right after the style of the case. For us, it begins,
5 "If you resided in Virginia," and --

6 THE COURT: Who was snoring there?

7 MR. BENNETT: Probably everybody as I talk,
8 Judge.

9 But the defendant has really tried to just
10 use the class definition, and we include the class
11 definition later in the notice, but in that opening we
12 followed the Federal Judicial Center's study and
13 advice on really simplifying the introduction and
14 heading. And so we have not legalized or whatever, if
15 such a word existed, we have not tried to use overly
16 complex language in our opening paragraph.

17 That's really the largest difference between
18 the parties in the notices. There are some other
19 differences, but that's the biggest one.

20 MR. GOHEEN: This is Barry Goheen. I would
21 agree with that. That's probably the largest
22 difference. I guess our view is it seems like right
23 out of the box one would want to be advised of what
24 exactly the class definition is as opposed to a
25 paraphrasing of the definition, but I guess that's

1 just a difference maybe in philosophy.

2 I do think, however, on that point, the
3 plaintiff's bolded text does not mention Equifax. It
4 says, "If you resided in Virginia during the time
5 frames or were subject to Virginia civil judgment."
6 It seems like you would at least want to disclose
7 Equifax as the defendant even though, of course, the
8 style of the case right above it does that.

9 THE COURT: Well, I agree with that. But I
10 believe that the simplified notice, the more readable
11 notice, is probably preferable. I don't see that it
12 does any violence to the -- well, the problem that I'm
13 having with the simplified notice is this. There are
14 restrictions to Virginia courts and the time period,
15 and I guess my reaction, Mr. Bennett, is that you
16 ought to use the class notification, the class
17 definition.

18 I understand what the Federal Judicial Center
19 has done, but sometimes it's better to stay with the
20 tested method. So I think you-all ought to use that.

21 Are there any other differences that you-all
22 can't resolve immediately?

23 MR. GOHEEN: I think the other differences
24 are defined as suggestions that Equifax made that were
25 not put in. As far as we can tell, I think we're okay

1 with those not being put in. There were a couple of
2 wordsmithing issues, and a couple of other things, but
3 I don't think anything that Equifax would characterize
4 as particularly significant. So I think anything
5 further can be or will be worked out.

6 THE COURT: I do think this, Mr. Bennett.
7 The format used in the Equifax proposal, which puts
8 the class up and across the page instead of halfway
9 down, I think it makes it more readable if you set it
10 up their way.

11 MR. BENNETT: Yes, sir. I actually agree
12 with that. Your Honor, one of the challenges is that
13 we've not -- and it's not as if anybody has been
14 sitting on their hands. I understand Equifax's
15 counsel has been interacting with us every hour about
16 the other issues we're working to resolve, but we have
17 not focused as heavily on resolving the differences,
18 and it's not because we don't think it's important, of
19 course, it's just Equifax's resources have been
20 diverted to our issues regarding the list.

21 THE COURT: Has the law firm representing
22 Equifax diminished in size recently, Mr. Goheen?

23 MR. GOHEEN: Not the team devoted to this
24 case, Your Honor. I think I'll tactfully answer it in
25 that way.

1 THE COURT: Well, I guess there has been the
2 other matter, hasn't there?

3 MR. GOHEEN: Maybe I'll defer on that if it's
4 all right with the Court.

5 THE COURT: I think that's a prudent
6 deferral.

7 MR. GOHEEN: Thank you, Your Honor.

8 In seriousness, the answer is no. Mr.
9 Bennett is correct. We have focused, very diligently,
10 and I'm talking about both sides, Mr. Bennett and his
11 team and our team, on trying to get schedule and get
12 the class list issue, and this is just, you know, me
13 talking, not trying to attribute anything to Mr.
14 Bennett. The notice is, obviously, very important,
15 but the notice likely is not going to go out for some
16 period of weeks just because the class list needs to
17 be generated first. And I think that's what has had a
18 lot of attention, most of the attention, by the
19 parties. But having said that, I do think the notice
20 is pretty much in its final stages at this point.

21 THE COURT: Let's get that agreed and tender
22 a final notice. Get that done right away.

23 MR. GOHEEN: Yes, Your Honor.

24 THE COURT: We'll have that done. Now,
25 what's the problem with the class list? It says the

1 issue is whether Equifax will generate the list or be
2 ordered to produce access to its general database so
3 the plaintiffs' experts may generate the list. Who
4 wants what and what are the considerations?

5 MR. BENNETT: Judge, the considerations are
6 --

7 THE COURT: First, who wants what? Mr.
8 Bennett, who wants what? Who is it that wants Equifax
9 to generate the list and who is it that wants the
10 expert of the plaintiffs to generate the list?

11 MR. BENNETT: I believe that both sides would
12 want Equifax to generate the list. I'm not trying to
13 be Bennettese, but all other things equal, the
14 question is the timing restrictions that Equifax would
15 impose in Equifax's cost demands with respect to its
16 internal generation of those.

17 The parties, even just minutes before this
18 status call, have exchanged again another draft
19 internally of our proposed plan, and I believe, Your
20 Honor, that if we had another 24 hours that the matter
21 could be worked out.

22 We have compromised as to the timing
23 restrictions, the length of time Equifax has wanted.
24 It has been --

25 THE COURT: What is the length of time that

1 Equifax wants?

2 MR. BENNETT: Mr. Love or Mr. Goheen?

3 MR. GOHEEN: The time that we discussed with
4 plaintiff and that we've agreed to with plaintiff
5 subject to, of course, the Court's approval is by
6 July 31 Equifax will provide 25 months of archive
7 credit file data on consumer's meeting certain
8 criteria.

9 And I agree with Mr. Bennett's comment that
10 if we had another 24 hours, we could probably resolve
11 the very narrow issues that remain, which primarily at
12 this point based on this mornings' conversation, it's
13 really one issue, which is the scope of plaintiff's
14 counsels' access to the data that would be produced to
15 the vendor that plaintiff eventually retains.

16 So we have negotiated, as Mr. Bennett said,
17 literally every day and sometimes, you know, every
18 hour to try to get this resolved, and we have it down
19 to this one very narrow issue.

20 THE COURT: So you-all have agreed on how to
21 handle the costs, what they are, and how they'll be
22 handled?

23 MR. GOHEEN: The agreement there, Your
24 Honor -- this is Barry Goheen. The agreement there is
25 that the parties will or, I guess, Equifax would file

1 a motion for reimbursement or recoupment after those
2 costs are incurred. In a sense, Equifax is advancing
3 the cost with the right to move the Court for
4 reimbursement and just essentially brief the issue
5 with the plaintiffs and put that issue before the
6 Court.

7 THE COURT: How much are the anticipated
8 costs? Surely you-all have a feel.

9 MR. GOHEEN: We believe they'll be into the
10 six figures to be sure, Your Honor.

11 MR. BENNETT: And, Judge, this is actually a
12 point of disagreement. Our proposal and what I
13 understood that we were agreeing to, and we're
14 exchanging documents that would clarify that there
15 isn't any such disagreement, is that this matter would
16 be deferred. It isn't that we agree that they would
17 have to petition the Court and that the Court will
18 determine the amount of the costs.

19 We intend to oppose Equifax's entitlement to
20 such costs on multiple bases, including that this is
21 the path, that this method of generating the list is
22 the path that Equifax has selected as opposed to the
23 alternative of providing the data unfiltered to us at
24 a less cost effective -- I mean, a more cost effective
25 level.

1 So what we have done, and I understood one of
2 the greatest concerns Equifax has, is not setting a
3 public precedent about its willingness to incur such
4 costs. So we suggested that they could paper it and
5 document it, that they reserve, that Equifax reserves
6 the right to seek such costs if there is such a right.

7 THE COURT: Is the that right, Mr. Love? Is
8 that what you-all have agreed to?

9 MR. LOVE: That's not exactly how we view it,
10 Your Honor. Our view is that Equifax would advance
11 the costs and then reserve the right to seek those
12 costs through a motion filed with the Court at a later
13 date.

14 The plaintiff would not be precluded from
15 asserting any objections to those costs, not just the
16 amount of the costs, but these entitlement arguments
17 that Mr. Bennett raised and those types of things.
18 It's fair game any arguments he wants to make.

19 THE COURT: What's the difference between
20 what you said and what he said? I didn't see any
21 based on what you just told me, but you-all have been
22 talking about this a lot more than I have and
23 understand the subtleties of your conversation. I
24 didn't pick them up. What is it? What's the
25 difference?

1 MR. GOHEEN: This is Barry Goheen. I do
2 think there's not a lot of difference. I think what
3 Mr. Bennett was saying, he must have interpreted what
4 I said as sort of a concession that there'll be some
5 payment, and if I suggested that, then I don't think
6 that's right. I think what Mr. Bennett said is
7 largely correct.

8 Equifax is reserving the right to make an
9 appropriate motion with the Court for payment of those
10 costs. Plaintiffs have reserved the right or if
11 Equifax files such a motion, plaintiffs can object to
12 the payment of any costs or make an entitlement
13 argument.

14 THE COURT: You mean take the position that
15 costs aren't allowed at all because of whatever
16 reason?

17 MR. GOHEEN: Correct.

18 THE COURT: All right. Well, it sounds to me
19 like you-all are in agreement on that. Get that
20 straight.

21 Now, I am a little bit concerned about it
22 being the 16th of May, and you-all are talking about
23 10 more weeks to generate a class list. All of June,
24 all of July, and two weeks of May. That seems right
25 long to me.

1 What's the situation there, Mr. Love? Why is
2 it going to take so long?

3 MR. LOVE: Your Honor, we have had
4 consultations with Equifax's computer programmers and
5 technology experts who would be in charge of running
6 this data. The July 31 date is actually, from
7 Equifax's view, extremely conservative given all the
8 steps that are required to produce this data.

9 They have provided to us a list of items that
10 they have to go through in order to design the search,
11 run the search, do quality and data assessment on the
12 search, and all this for a very large number of
13 consumers. Nothing like this has been done before and
14 it's not something that can be done with the push of a
15 button.

16 These searches are very complex and
17 especially when you start narrowing it to the
18 criteria, the specific criteria, like is done here.
19 So that is what requires so much time. It's the
20 design, the development, the implementation, the Q.A.,
21 it's a very time consuming and resource consuming
22 process.

23 THE COURT: Mr. Bennett, if their database
24 were turned over tomorrow to your expert, how long
25 would your expert take to get it done?

1 Mr. Bennett, are you on the phone?

2 MR. BENNETT: I am, Judge. Sorry. I had
3 mooted my phone.

4 THE COURT: No, you didn't moot your phone.

5 MR. BENNETT: I thought I did.

6 THE COURT: You muted your phone.

7 MR. BENNETT: I'm sorry, Judge. I muted my
8 phone.

9 I do think that the middle of July if we had
10 a third party do it -- we negotiated with Equifax that
11 it would produce this information on a rolling basis
12 and, thus, it would not really slow down the process
13 of taking that data and matching it against the
14 Virginia Supreme Court data as we go through this.

15 THE COURT: What do you mean producing it on
16 a rolling basis?

17 MR. BENNETT: As Equifax searches and
18 compiles the list on a monthly tape basis, then we
19 would have that data to then run through our vendor.

20 THE COURT: But, according to Mr. Love, what
21 takes the time is not the actual running of the data,
22 it's the design of the system unless I misunderstood.

23 When do you expect the design of the system
24 to be completed, Mr. Love?

25 MR. LOVE: It's both things, Your Honor. It

1 is not just the design of the system. It is also the
2 running of the programs. And the design of the system
3 does not take as long as the actual running, but the
4 design takes a few weeks, and then the running takes
5 the longer period of time. But I don't think that
6 we've heard any estimate from any vendor because I
7 don't know that any vendor has been retained yet.

8 So that's just complete speculation, whereas
9 our people who do this every day or at least manage
10 Equifax's data and design computer programs every day,
11 they have very detailed estimates of how much time
12 this would take.

13 THE COURT: Do you think it could all be done
14 by the end of July?

15 MR. LOVE: Yes, sir.

16 THE COURT: All right. And you're in
17 agreement with that, Mr. Bennett?

18 MR. BENNETT: Yes, sir, I am.

19 THE COURT: All right. Then I think we'll
20 entrust it to Equifax to do it that way with this
21 caveat: I would like to have someone from the law
22 firm intimately involved in the process, someone like
23 Mr. Goheen or Mr. Love, to follow through on a regular
24 basis to make sure these people are not putting this
25 project off for some other project, to make sure that

1 any problems are being addressed immediately, and that
2 it's sorted out, and then I want the law firm to
3 report regularly to Mr. Bennett so that if there's any
4 problem, we don't come up with something on July 31 in
5 the way of a request to have more time.

6 Is there any reason that can't be done,
7 Mr. Goheen or Mr. Love?

8 MR. LOVE: No, Your Honor, we understand the
9 Court and we will do exactly as Your Honor just
10 outlined.

11 THE COURT: It has been my experience in
12 having to deal with like problems in other settings
13 that as a general proposition the people who handle IT
14 departments see a lot of bugaboos that actually aren't
15 bugaboos and are apprehensive where there's no need
16 for apprehension and can end up spending a fair amount
17 of time dithering over things that don't make a lot of
18 difference, and it's for that reason that I have
19 asked, and I tend usually to do this, to have an
20 intimate involvement by the law firms so we make sure
21 it's done.

22 On the other hand, I also have seen law firms
23 create such problems that the IT people throw up their
24 hands, pull out their hair, and want to shoot their
25 lawyers. So I don't want anybody exposed to that risk

1 either. So you-all be reasonable while you're doing
2 it.

3 All right. Now, what's the issue about
4 access of class counsel to the -- what data is it
5 we're talking about? Are you talking about the
6 ultimate list generated or the underlying data or
7 what?

8 MR. LOVE: No, Your Honor. This is Mr. Love.
9 The issue is this: Equifax is going to produce a very
10 large set of data to plaintiff's outside vendor yet to
11 be named. And that large group of data will contain
12 information about people who may or may not be in the
13 class. If plaintiff's vendor through its search
14 determines that people on the data from Equifax are in
15 the class, Equifax doesn't have any problem with
16 plaintiff's counsel having access to that information
17 about the class members subject to appropriate
18 security vetting and things like that.

19 It's the information about people who are not
20 in the class that Equifax wants to restrict so that
21 plaintiff's counsel does not have access to people
22 who, though on the initial set of data, are not
23 determined to be in the class by plaintiff's vendor.

24 THE COURT: Mr. Bennett.

25 MR. BENNETT: Judge, we don't have any

1 difficulty with that limitation and we've worked
2 through that. I think both sides agree. That is, we
3 would not have access to the pre-class list data.

4 THE COURT: Mr. Bennett, it sounds to me like
5 from what you said and Mr. Love said you-all have
6 agreed on this point; is that right?

7 MR. BENNETT: We have not entirely, Your
8 Honor.

9 THE COURT: Well, then why not?

10 MR. BENNETT: Because there are two other
11 reasons in which we would need to be able to interact
12 with the vendor or the administrator. Number one is
13 process by which the vendor would create the full
14 protocol. So we're going to have raw data as we work
15 it through and we debug the administrator's system to
16 make sure that they are correctly generating a list.
17 And I think the parties have talked about a sample.
18 We have exchanged a proposal about that, and
19 hopefully, again, within short order we would have
20 agreed.

21 The second difficulty is that as this process
22 is ongoing there will be some anomalies in which the
23 administrator needs to seek feedback not just from us
24 but from the defense counsel. So we have, as well,
25 exchanged the process.

1 So, for example, if the administrator says,
2 "I have these files where the names appear in
3 different fields in Equifax systems, how shall I
4 handle these?" then the administrator needs to be able
5 to share that information with us.

6 And we don't, as I've explained, and
7 certainly I think that they count on this explanation,
8 to defendant's counsel, our expectation is the
9 defendant would be involved in this process. So what
10 we have suggested, and I think that Mr. Love's current
11 draft is close, we just received real shortly before
12 the call, is that there is -- a proposal will have an
13 obligation to meet and confer about any such
14 anomalies, and if they can be resolved, we would be
15 asking Your Honor to just set in it the order, the
16 notice order, sending those issues to a magistrate
17 judge.

18 We certainly don't mind if Your Honor has it,
19 but given the limitations on the district court
20 dockets right now, the suggestion that the parties
21 would be proposing, I think, is that if there are
22 questions such as can Rust share the file of these 10
23 files that have stuck out, and we can't work it out,
24 and we most certainly likely can, but then we would go
25 to whatever magistrate judge Your Honor would task

1 with that for -- to sort that out.

2 THE COURT: All right. Well, it sounds to me
3 like you-all are fairly close. I agree that in the
4 process of making sure the system works, that counsel
5 for the class has to have access to the information in
6 order to do that, and that in cases of close calls or
7 problems, the class counsel has to have access to that
8 kind of information.

9 I also believe that in both instances counsel
10 for Equifax has the right to know and understand what
11 is happening and why the information is being given
12 and why the information is given and to whom it is
13 given and ought to all be able to work that out with a
14 little bit of further drafting it sounds to me like.
15 So let's work to get that done and to get that
16 agreement tendered with a consent order forthwith.

17 We will agree that a magistrate judge will be
18 assigned to handle the matter. Is there a magistrate
19 judge assigned to settlement already?

20 MR. BENNETT: I believe Judge Dohnal had been
21 assigned to settlement.

22 MR. GOHEEN: I believe it was Judge Lauck.

23 MR. BENNETT: All right. Judge Lauck.

24 THE COURT: In this case it might be best to
25 let Judge Lauck actually handle the disagreements over

1 this issue, too, wouldn't it? Actually, I'll just
2 assign it to Judge Dohnal and let him handle any
3 disagreements. All right?

4 MR. BENNETT: Yes, sir.

5 THE COURT: When are we going to get these
6 consent orders in here so we can get this all
7 straightened out?

8 MR. BENNETT: I'll be optimistic and say
9 tomorrow, but I would like if the Court could permit
10 us to get them filed by close of business Wednesday.

11 THE COURT: All right. File them by close of
12 business Wednesday. It looks be me like everything
13 else has been sorted out.

14 Also file the revised notice with the
15 statement that that's what you-all have reached by
16 agreement.

17 The notice is not going to go out until
18 there's a list anyway, but we'll have to cross the
19 bridge about what to do if there's a list and the
20 Fourth Circuit hasn't decided the issue, if and when
21 that comes, because we sure don't want to send
22 something out and have to issue a recall. That just
23 creates confusion.

24 I really don't think the Fourth Circuit is
25 going to have any trouble with this class definition

1 or the class certification, but if it does, that's all
2 right, and we'll work through it. If I thought it was
3 a close call, I would just slow the whole process
4 down, but I don't think it is, and I think doing what
5 you're doing is a useful and productive effort that
6 will allow the matter to get litigated promptly.

7 So I expect to hear from you on Wednesday.
8 Is there anything else you-all need to take up? I
9 think your proposed schedule is fine.

10 MR. GOHEEN: Your Honor, this is Barry
11 Goheen. The Court when we were last on the phone with
12 the Court had mentioned working through the Court's
13 schedule with regard to trial. I don't know if
14 there's been an update on that from the Court's end or
15 not.

16 THE COURT: Well, we're looking to -- before
17 the notice goes out, I'd like to have a trial date, at
18 least a tentative trial date, but I think right now I
19 still don't -- I need to know how long the trial would
20 take. I need a reasonable estimate to know how long
21 the trial will take. And I'm not sure we know that
22 yet.

23 Also on the discovery, you can have the
24 discovery you want, Mr. Bennett. That's all right.
25 Just don't abuse it. Just because you have 45

1 interrogatories doesn't mean you have to use them all.

2 MR. BENNETT: Yes, sir. We understand that.

3 THE COURT: And you don't have to be abusive
4 if it. And if I find there's a problem, Mr. Goheen
5 will have access to the Court to reconsider the whole
6 thing. So we're not going to worry about that.

7 How long before you think you'll be in a
8 position for me to know how long this trial would take
9 if it goes to trial?

10 MR. BENNETT: Judge, I understand the
11 importance of setting aside the docket, but it may not
12 be until after summary judgment that Your Honor has a
13 full answer.

14 THE COURT: Well, I'm looking at sometime in
15 the spring of next year for a trial date, but we'll
16 just have to be flexible and wait and see. I think
17 artificially setting a trial date is not necessary.

18 I guess right now what I can do is give you
19 one date. I don't think it's going to take more than
20 a week to try the case.

21 MR. BENNETT: Yes, sir.

22 THE COURT: Right now I want you to -- let's
23 see. The summary judgments will be in by the end of
24 the year?

25 MR. GOHEEN: Yes, Your Honor.

1 THE COURT: I'm looking for a calendar for
2 next year. Let's look at the week of May the 15th
3 tentatively for the trial. Just reserve that on your
4 books so that we don't have any problems.

5 How does that suit you-all? Anybody got any
6 long-term plans that that will interfere with?

7 MR. BENNETT: Judge, that's the best part
8 about being in this docket. Plaintiff doesn't.

9 MR. LOVE: That's fine, Your Honor. Thank
10 you.

11 THE COURT: Well, it avoids spring vacations
12 and Mother's Day and all that kind of thing.

13 MR. GOHEEN: That's the week that begins
14 Monday, May 14, 2012?

15 THE COURT: I thought it was the 15th, but
16 maybe I was looking at the calendar wrong. Let me
17 look and see what I did wrong. Yes, it's May 14.
18 When is Mother's Day? It's the second Sunday in May,
19 isn't it?

20 MR. LOVE: Right. I think it would be the
21 previous Sunday, I think, Your Honor, meaning the
22 13th.

23 THE COURT: Yes. Well, maybe we ought to do
24 May 1 then. Is that a problem for anybody?

25 MR. BENNETT: No, sir.

1 MR. GOHEEN: No, sir.

2 THE COURT: All right. Let's tentatively set
3 the trial for the week of May 1, 2012. I'll issue an
4 order that says it is done and it is tentatively set.

5 In fact, why don't you just redo -- well,
6 I'll just take what's in your schedule and put it into
7 a schedule that will take care of everything including
8 the tentative trial date, but realizing that we don't
9 know the dimensions yet, if there's a problem, we're
10 just going to have to be flexible. But now it's on
11 your book and mine and we can have something or not
12 depending upon what ultimately happens with a lot of
13 things that are to occur between now and then.

14 Is there anything else that you-all need to
15 take up? Mr. Bennett?

16 MR. BENNETT: No.

17 THE COURT: Mr. Goheen?

18 MR. GOHEEN: No, Your Honor.

19 THE COURT: All right. Well, again, I
20 appreciate the productive manner in which you-all have
21 worked together trying zealously to advocate for your
22 clients at the same time comporting yourselves in a
23 highly professional way, and it has resulted in some
24 decisions. And we'll just abide the events.

25 I don't remember whether the Fourth Circuit

1 hears any arguments on these motions or not. Does it
2 usually, Mr. Bennett or Mr. Goheen? What do you all
3 know?

4 MR. GOHEEN: I think it may be, in my
5 experience, Mr. Bennett may have a different one, it's
6 a case by case. Certainly not whether to grant the
7 petition. There won't be an argument on that.

8 THE COURT: Yes, I've never known them to do
9 an argument on whether to grant it. Am I wrong about
10 that? Has that happened?

11 MR. GOHEEN: I've never heard of it before,
12 Your Honor. If it were granted, then I would say it's
13 probably a likelihood there might be a --

14 THE COURT: They usually put it on the
15 calendar then, I think.

16 All right. Well, we'll just abide the event,
17 and we're set up to go forward if they deny the
18 petition. If they grant it, we'll just have to
19 revisit what we're doing.

20 MR. GOHEEN: Thank you, Your Honor.

21 THE COURT: All right. Thank you all very
22 much.

23 MR. BENNETT: Thank you.

24 THE COURT: Bye.
25

1 (The proceedings were adjourned at 10:43
2 a.m.)

3
4 I, Diane J. Daffron, certify that the
5 foregoing is a true and accurate transcription of my
6 stenographic notes.

7 /s/

8 DIANE J. DAFFRON, RPR, CCR DATE
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